

MINUTES OF THE 21 JUNE 2006
TRINIDAD PLANNING COMMISSION MEETING

I. ROLL CALL

Chairman Kenny called the meeting to order at 7:30 p. m. Commissioners in attendance were Kenny, Odom, Fulkerson and Johnson. Lake arrived after the approval of Minutes. Council Liaison Heyenga was in attendance. Brown, Parker and Price-Hall represented staff in attendance.

II. APPROVAL OF MINUTES - May 17, 2006

Johnson requested that the last sentence of page 1, continued on the top of page 2, be amended to reflect that no gateway funds are to be used. Odom moved to accept the minutes as amended; Johnson seconded. All were in favor. The motion passed 4-0.

III. APPROVAL OF AGENDA - There were no modifications of the agenda.

IV. ITEMS FROM THE FLOOR - None

V. AGENDA ITEMS

1. US Cellular 2005-13a: Design review, Coastal Development Permit and Conditional Use Permit to install two antennas on existing 20' poles; new equipment cabinets will be installed within the existing fenced area. Trinidad Head Communications Facility; APN: 042-121-05

Kenny opened the discussion and asked Parker to summarize Agenda item 1. Parker summarized the project history, noting that a previous version of this project had been denied by the Planning Commission in January 2006 and that decision had been appealed to the City Council. She also noted that the appeal hearing had been scheduled in May, but since the project had been revised, the City Council elected to send the amended project back to the Planning Commission for review, bring us to tonight. Parker also explained that the Bureau of Land Management (BLM) consistency issue is separate from this project, but that the issue is has been addressed by including a proposed condition of approval that construction of this project can not occur until after the City receives a consistency determination from the BLM. Johnson mentioned that Mayor Lin and BLM had met, and that the City expected their determination within the next week. Parker continued by summarizing the staff report, and noted that mockups are currently installed on the site. Parker emphasized that a denial should be specifically based on not being able to make all one or more of the required findings.

Kenny requested clarification on whether or not the city has jurisdiction over the Federal property on Trinidad Head. Parker said no, and noted that the City is not even notified of projects there. Kenny confirmed there were no other questions of

staff from the Planning Commission, then asked the applicant's agent, Tom McMurray, to describe the project. McMurray introduced Bernie Gribbon, an engineer for US Cellular, and then gave a brief history of the proposal, passing out information materials to the Commission and the public. He noted that US Cellular had proposed several alternatives to address public concerns, culminating in the current project. He requested the Commission to make their decision consistent with past cellular projects, noting the findings the Planning Commission has made in the past for similar projects. McMurray reminded the Commission that Federal law requires them to treat all cellular carriers equally. Kenny then opened the public hearing to questions for the applicant's agents.

Fulkerson asked for clarification regarding the co-location of various cellular facilities and the City's lease agreement with Cal-North. McMurray stated that Cal-North is the lessee of the site, which requires them to allow co-location of other provider's equipment where feasible; Cal-North then subleases to the other carriers. Fulkerson confirmed that the City earns a certain amount from Cal-North and the City also gets a percentage of any sublease amount.

Johnson asked McMurray about the small square antenna is that was recently placed at the facility. McMurray stated that it was his understanding that it was temporarily placed for a test to see if a signal could be carried, and that it would not be reinstalled. Johnson also asked if the location and height of the mock ups represent the exact position and alignment of the proposed antennas, and McMurray responded that it was within a few inches of the exact position and alignment.

Johnson asked if there are or has the applicant considered ways to reduce or mitigate equipment noise. McMurray responded that the project had been designed to minimize noise by placing the cabinets as far west as possible and facing the fans away from the trail. He noted that there were other, more noticeable, noise producing equipment in the area. There was further discussion about potential noise mitigation.

Kathy Bardwaj (308 Ocean Ave.) asked if the antennas will be as shown on the (mock up) pole or higher? McMurray said the antennas will be approximately where they are, at a maximum of 24" above pole.

Brad Twoomey (116 Himalaya Dr.) commented that Friends of Trinidad Head searched City files looking for something that would allow cellular facilities on the Head. He said that because of open space zoning, the existing installation should not have been established. He said the fact that cable TV was there already and the City said they would cooperate with such users was not a finding but a management idea. He presented a history of existing installations (see written comment) and concluded that the accessory rationale was not valid, and that the site had been abandoned for more than a year, requiring the use to be discontinued. He responded to Kenny's question that he had not been against the project in 1997, but that he had taken the staff report at face value. Fulkerson

noted that she appreciated the research that Friends of Trinidad Head have done.

Johnson asked, setting aside legalities and cell phone towers, what Twoomy felt was the difference between the proposed project and the government structures up there, which are taller and bulkier. Twoomey responded that the City got the land from the Federal agencies and that cell towers show up more than anything. He stated that agencies are benefiting the public and that the Federal property has no zoning, whereas the private towers are in an Open Space zone.

Maria Bartlett (806 B Edwards) commented that she could see cell towers from her house. She noted that she voted no on the cellular facility when she was on the City Council, because there was not enough information about the health issues and cultural resources and that there are always environmental impacts.

Kathy Bhardwaj (308 Ocean Ave.) apologized for submitting comments at the meeting, noting that it is difficult to get information together on such short notice. Her written comments, which she summarized, included alternative findings and interpretations of Zoning Ordinance provisions than what was provided in the staff report (see written comment). She also showed drawings to the Commissioners illustrating the growth of the site, and the cumulative effects of the cellular facility over the past nine years, and asked what another nine years will accumulate.

Carol Rowe (797 Edwards) commented that many houses in town are vacation rentals and she is concerned about the impacts of cell poles on tourism. She asked if any other appropriate sites had been identified or considered. Kenny noted that McMurray had explained that Trinidad Head was the most ideal spot due to the characteristics of the site.

Cindy Lindgren (335 Westgate Dr.) referred to a 12/20/2005 email from Jim Baskin, Coastal Commission staff, to Trever Parker, City Planner, noting the problems with the site. She said she has been reviewing and collecting materials on this issue, and there are a number of significant illegalities with the existing site. She stated that the Planning Commission consider their decision based on the blue binder Friends of Trinidad Head put together and consider the fact that this is not a small problem, that it's not about one more antenna, its about further breaking of the law.

Patricia Kish (51 Midway Dr.) read a comment letter from Stan and Kim Binnie who were out of town.

Michael Pedell (address?) commented that the idea of a cell antenna on the head is wrong. He asked the commissioners to listen to the community, stating that they are against the towers.

Mike Morgan (584 Ocean) stated that he is against an expansion of commercial uses and requested that the City let the existing leases expire.

Victoria Sackville (364 Ocean) stated that she has a view of the Head and prizes both the view and the community. She stated that she does not want to see cell phone towers. She noted that the Federal facilities are different because the government research has a public purpose. She stated that she opposes any further commercial development and urged the Commissioners to please vote no. Brad Twoomy added that there is no legal requirement to let the project go forward. Sackville reiterated that the Telecommunication Act gives the right to towns to follow their ordinances, including Open Space zoning.

McMurray responded to questions that: 1) the original lease allowed CalNorth to use a 12 ft dish; 2) the lease allows related equipment to be installed, including co-located facilities; and 3) this project is below the view of most everywhere in the City. He said that the elevation and position of the Head and Highway 101 makes that location necessary to provide the services customers demand. He stated that this project provides a public service, including access to 9-1-1. He presented a map with the proposed cellular coverage from this project.

Naomi Silvertree (trailer park) stated that she walks on the head a lot and doesn't agree that there is no impact. She said she can hear the equipment fans from a bench that interferes with her use. She said she doesn't demand these cellular services and urged the Commissioners to vote no.

Pedell asked what kind of demand there is and commented that the 9-1-1 scare tactic is wrong, no matter how you shape it. Rowe also asked if the public is requesting services. Johnson and Fulkerson said they would want better service. McMurray noted that US Cellular would not invest more than a quarter of a million dollars if there was not a significant demand.

Bhardwaj said that several members of Friends of Trinidad Head went around with cell phones to various places and houses, and they found the reception didn't match the coverage chart. She said that if Trinidad Head was not there the providers would find another place for the antennas. McMurray responded that theirs was not a scientific survey and that tourism makes this a hot area for cellular, noting that phone service was not the only service this new facility would provide. He stated that the legalities of the existing site have already been addressed by past projects and that industry should be able to add equipment, as covered under the lease.

Kenny closed the public comment period and began Commission deliberations. He commented that the issue generates controversy and asked the Senior Planner, Bob Brown, to summarize the history of the site and address some of the comments that had been made. Brown stated that there was a prior right – it was his understanding the existing facility had been utilized until CalNorth took over, and that subsequent projects only added to what was previously there.

Odom asked whether there was any validity to the claim that the use had been abandoned for more than a year and so should not have been reestablished. Brown felt that when the Head was transferred, the understanding was that the site was a general communication facility that would continue, and noted that at the time (1997), the community wanted the cellular service. Parker stated that a lot of Trinidad's zoning language is vague and open to interpretation, leading to confusion. She added that it appeared that even if Cox had stopped actively utilizing the site, the lease was not inactive for more than 10 months. She added that staff had not addressed the legality of the existing site in detail, because, as was advised by the City Attorney, staff should process this application the same as previous applications, and assume that the site was legal, based on previous staff reports.

There was a discussion about noise impacts. At first McMurray disagreed with proposed condition number 7, limiting noise generation. McMurray argued that US Cellular has incorporated the maximum measures to minimize any noise impacts, but that eliminating them altogether would be impossible. Some alternative measures were suggested and discussed. Kenny commented that he didn't see a huge difference between the cable TV facility and the cellular facility other than some of the additions that have been made but that there has been a dramatic change in how people view cellular projects. He suggested the possibility of putting a moratorium on further cell projects, but had not found a valid reason not to approve this project, though he noted he is in favor of keeping condition # 7. Odom agreed with Kenny that it is hard to listen to so many who disagree with the project, but cell services are necessary and agreed with Kenny on retaining condition # 7. McMurray stated that the company would agree with that.

Fulkerson commented that she did not hear rancor in the room, but well thought out discussion. She noted that McMurray's presentation was good, and that it is great to have such thorough research by public and staff. She stated that if she didn't care about the view, and the sacred ground, and the environment, that she would want her cell phone services improved. She said she is glad people are speaking up on issues in the community, and that she has misgivings about the proposed project.

Johnson also thanked everyone for all the efforts on this issue, as it is hard to look at everything pro and con when there is a need to create a balance about the issue. He stated that he was not convinced he could overlook the illegality, and the public values, which have changed, and feels he has to err on the side of conservatism. He proposed to allow the application to go forward for the length of the prime lease, with a moratorium on new development after this application, and removal of all the equipment after expiration of the lease. He also recommended that the City develop a specific management plan for Trinidad Head to holistically address all the issues and resources there. He suggested that in the future it would be better to develop alternative sites with cooperation between the community and the cellular providers. There was a discussion

among the Commission regarding these issues and whether they could be made conditions of approval.

Brown noted that as conditions of approval, such recommendations would be difficult to enforce, because they would require formal action by the City Council. He suggested that to solidify the moratorium, the Commission make that a part of their findings, so that future projects could be limited by that finding. Kenny moved to approve application as conditioned with an amendment to condition # 8 that if BLM does not make a decision within 90 days construction can commence, and the added finding that based on public comment / testimony, there are cumulative impacts of cellular development that interferes with the primary use of open space and recreation on the Head. Odom seconded. Motion passed 4-1, with Fulkerson opposed. As part of their motion, the Planning Commission made a strong recommendation to the City Council to follow through with the following: 1) That this project only be allowed only until the term of the primary lease has ended; 2) That a moratorium be placed on the construction or placement of any new cellular equipment or facilities on Trinidad Head; 3) That the City Council consider developing a management plan for Trinidad Head, possibly to be included in a General Plan update; 4) To not renew the primary lease when it runs out and have the cellular facilities removed at that time; 5) Between now and the termination of the lease, work with the community and cellular providers to locate an alternative location for cellular facilities within Trinidad.

Break

2. City of Trinidad 2006-07: Design Review and Coastal Development Permit repair and extend the retaining wall supporting the Van Wycke Street Trail that was damaged in winter storms. Wooden railings will also be added to the south side of the trail along the retaining wall for public safety. Van Wycke Street right-of-way; APN: NA

Commissioner Fulkerson recused herself and took a place in the audience, because she lives adjacent to the project site. Parker summarized the staff report and the scope of work submitted by Madrone Enterprises. She stated that design review is required because of new the railings and that a Coastal Development Permit is required due to the expansion of the retaining wall and its location on the top of an unstable bluff.. She noted that the project is still just a repair of the trail to pre-winter conditions, and that the reason for the longer retaining wall is simply for the repair.

Johnson asked staff if, because there is already a bid from Madrone Enterprises, it means the City would go with this bid. Parker stated that Councilmember Marlow arranged this as the Trails Commissioner, and that process was dictated by the City Council. Brown stated that approval of this permit doesn't constitute an approval of the RFP.

Fulkerson commented that the City has been adding more weight and gravel to this area and making it slide and that she hoped this would be an engineered solution. Kenny stated that they would have to trust the experts that this is the best design. There was a discussion about the design. It was noted that the repair is recognized as temporary, and similar to past repairs, and that the design does include drainage.

Lake moved that based on the application materials and based on public testimony, the commission adopt the findings and approve the project as submitted. Odom seconded. The motion passed 4-0. Fulkerson returned to the commission after the vote.

3. Doran 2006-08: Planning Commission Policy Determination to continue the use of an Accessory Dwelling Unit. 524 Edwards St.; APN: 042-101-04

Parker provided a staff summary on the item, and stated that staff was asking for Planning Commission concurrence on this specific issue. She noted that the findings for this particular project were very specific so that this wouldn't be setting precedence for every second unit in town.

The applicant had no comments. Johnson asked staff why septic systems for 2nd units more strictly regulated. Parker replied that it is Health Department policy to require at least a two bedroom capacity per unit, even if the accessory unit is only one bedroom. This protects the system from the tendency for the use of second units to be maximized. She said that water consumption could be used to monitor the level of use, and would likely be included in the draft OWTS Ordinance.

Kenny opened the hearing to public comments.

Mike Morgan (584 Ocean) stated that he was not opposed to the unit if the new project has an appropriate septic system. The applicant responded that the system was designed for 4 bedrooms and produced documentation of that in the engineering report / system design, although the Health Department permit says 3 bedrooms.

Don Blue (651 Parker Lane) stated that he used to live near there and always felt the property should be upgraded. He said he is delighted that is happening, and urged commission support this determination

Kenny said that, having read the report, the reasoning seems sound, the septic system seems adequate, the permits are in order and the project seems to be in conformance with City regulations. Fulkerson moved to adopt the findings in the staff report and make the determination that the accessory unit was not abandoned and to allow the continued use of the accessory dwelling unit. Kenny seconded. The motion passed 5-0.

VI. STAFF REPORT Parker asked whether the Commission wanted to set up a study session for the OWTS. She said there are only a couple of minor applications for July. She passed out the City's and the Health Departments existing policies for reviewing projects in terms of OWTS, as well as a complaint about a 2nd unit. The Commissioners agreed to hold a study session at 6:00 p. m. before the regular meeting on Wednesday, July 19, at 7:30 p. m.

VII. COUNCIL LIAISON Heyenga handed out his liaison report and asked whether the Commission has any planning issues they wanted the Council to deal with, and suggested they participate in upcoming budget sessions to make recommendations for the upcoming fiscal year's planning budget.

VIII. Adjournment The meeting was adjourned at 10:21.

Respectfully submitted by: Rebecca Price-Hall
City of Trinidad